

EDWARD H. KUBO, JR. #2499
United States Attorney
District of Hawaii

FLORENCE T. NAKAKUNI #2286
Chief, Narcotics Section

MARK A. INCIONG CA BAR #163443
Assistant United States Attorney
PJKK Federal Building
300 Ala Moana Blvd., Room 6-100
Honolulu, HI 96850
Telephone: (808) 541-2850
Facsimile: (808) 541-2958
Email: mark.inciong@usdoj.gov

Attorneys for Plaintiff
UNITED STATES OF AMERICA

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,)	CR. NO. 05-00260 JMS
)	
Plaintiff,)	UNITED STATES' RESPONSE AND
)	OPPOSITION TO DEFENDANT
v.)	LOW'S MOTION FOR A
)	PRETRIAL HEARING ON THE
JAMES LOW, (01))	ADMISSIBILITY OF CO-
)	CONSPIRATOR STATEMENTS;
Defendant.)	CERTIFICATE OF SERVICE
)	
)	DATE: June 1, 2006
)	TIME: 9:00 a.m.
)	JUDGE: Hon. Alan C. Kay

**UNITED STATES' RESPONSE AND OPPOSITION TO
DEFENDANT LOW'S MOTION FOR A PRETRIAL HEARING
ON THE ADMISSIBILITY OF CO-CONSPIRATOR STATEMENTS**

COMES NOW the United States of America, by and through
Edward H. Kubo, Jr., United States Attorney, and Mark A.
Inciong, Assistant United States Attorney, and hereby files its
response in opposition to Defendant Low's motion for a pretrial

hearing on the admissibility of co-conspirator statements. Said response is based upon the files and records of this case, together with the attached memorandum of points and authorities.

I

POINTS AND AUTHORITIES

A. DEFENDANT HAS NO RIGHT TO A PRETRIAL HEARING REGARDING THE ADMISSIBILITY OF SPECIFIC CO-CONSPIRATOR STATEMENTS.

Defendant offers no authority, and the United States believes none exists within the Ninth Circuit, which requires a pretrial hearing to determine the admissibility of co-conspirator statements a trial. In this case, none is necessary as the United States is well aware of its obligation not to introduce hearsay testimony and has no intention of attempting to admit such evidence.

The United States will, however, seek to introduce non-hearsay evidence at trial pursuant to Federal Rule of Evidence 801(d)(2)(E). As required, each of those statements will be shown to have been made by a co-conspirator during the course of and in furtherance of the conspiracy.

If, during trial, the Defendant believes sufficient foundation has not been made to establish the co-conspirator statement as non-hearsay, he may object at that time.

IV

CONCLUSION

Based on all of the above, the Defendant's motion should be denied.

DATED: May 19, 2006, at Honolulu, Hawaii.

EDWARD H. KUBO, JR.
United States Attorney

By /s/ Mark A. Inciong
MARK A. INCIONG
Assistant U.S. Attorney

CERTIFICATE OF SERVICE

I hereby certify that, on the date and by the method of service noted below, a true and correct copy of the foregoing was served on the following at their last known addresses:

Served by First Class Mail:

JAMES LOW
Federal Detention Center
P. O. Box 30080
Honolulu, HI 96820
Defendant PRO SE

May 22, 2006

RICHARD KAWANA, ESQ.
810 Richards Street, Suite 851
Honolulu, HI 96813
Standby Counsel for Defendant
JAMES LOW

May 22, 2006

DATED: Honolulu, Hawaii, May 22, 2006.

/s/ M. Derby-Taufa'asau